Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Provision of Directory Listing Information	)	
Under the Telecommunications Act of 1934, As	)	
Amended	)	CC Docket No. 99-273
	)	
The Use of N11 Codes and Other Abbreviated	)	CC Docket No. 92-105
Dialing Arrangements	)	
	)	CC Docket No. 92-237
Administration of the North American	)	
Numbering Plan	)	

COMMENTS OF SBC COMMUNICATIONS INC.

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SBC Communications, Inc. ("SBC") hereby submits these comments in response to the Notice of Proposed Rulemaking[1] ("NPRM") issued in the above captioned proceeding. As SBC demonstrates herein, the actions proposed in this proceeding are neither within the Commission's authority nor in the public interest and should be rejected.

I. BACKGROUND AND SUMMARY

One of the primary goals of the Telecommunications Act of 1996 is to open telecommunications markets to competition.[2] Congress envisioned a competitive market where interexchange carriers ("IXCs"), local exchange carriers ("LECs") and cable companies would compete vigorously to provide Americans local exchange, toll and video services. To implement

[1] *In the Matter of Provision of Directory Listing Information Under the Communications Act of 1934, as amended*, CC Docket No. 99-273, *Notice of Proposed Rulemaking*, 17 FCC Rcd 1164(2002)(*NPRM*).

[2] The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56(1996).

this goal, Congress enacted Section 251, which, along with Section 271, houses the key market-opening provisions.

Dialing parity and nondiscriminatory access to directory assistance are two of the obligations imposed on LECs under Section 251. The Commission has already addressed the scope of these requirements. It has held that these statutory provisions require LECs to: (1) provide telephone exchange and toll providers dialing parity for *telecommunications* services that require dialing to route a call;[3] (2) give such providers access to the LECs' local DA databases and local DA listings, and (3) permit such providers to use LECs directory assistance services and rebrand those services in their name.[4]

Now the Commission proposes an about-face. Without explaining why its prior statutory analysis was incorrect, it asks whether Section 251(b)(3) requires more or whether the Commission may require additional measures even if Section 251(b)(3) does not. Specifically, the Commission seeks comment on whether it should require 411 presubscription, assign alternative dialing methods for DA service, or eliminate use of the 411 DA access code.

SBC demonstrates below that the proposed actions in this rulemaking are unauthorized, unnecessary and bad public policy. Specifically, SBC demonstrates that neither Section 251(b)(3), 201(b), 202(a) nor 251(c) confers authority on the Commission to require dialing parity for 411 DA services. The Commission's authority to order dialing parity is derived from

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[3] *In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, et al., *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, ¶ 4 (1996) (*Local Comp. 2nd Report and Order*), *vacated in part, People of the State of California v. FCC,* 124 F.3d 934 (8th Cir. 1997), *rev. AT&T Corp. v. Iowa Util. Bd.,* 119 S. Ct. 721 (Jan 25, 1999). Commission concluded that dialing parity, by definition, extends to telecommunications services.

[4] *Id.; Provision of Directory Listing Information Under the Telecommunications Act of 1934*, as Amended, CC Docket 99-372, *First Report and Order*, 16 FCC Rcd 2736 (SLI/DA First Report and Order). Commission recognized that DA may not be a telecommunications service, but determined that DA is still subject to the nondiscriminatory access obligation.

the provisions of the 1996 Act that specifically addresses dialing parity: Sections 251(b)(3) and 153(15). Those provisions clearly and on their face limit dialing parity to: (1) telecommunications services; and (2) competing providers of telephone exchange service and telephone toll service. The Telegate proposal on which the Commission seeks comment would breach both of these requirements. Nor can the Commission circumvent the statutory limits in Section 251(b)(3) by relying on some other provision of the Act to implement the Telegate proposal.

While the Commission thus lacks legal authority to require dialing parity for DA services, it is also evident that this proposal — as well as the other proposals on which the Commission seeks comment — would impose costs that far exceed any benefits they could offer. As the Commission itself has recognized, the DA market already is subject to substantial competition. Numerous carriers — CLECs, IXCs and wireless carriers — offer DA utilizing 411 and other access codes. In addition, numerous independent firms, such as directory publishers and Internet providers, offer directories or directory services containing traditional DA listings and enhanced DA features. There is no market dysfunction that requires Commission action here. To the contrary, consumers enjoy a wide range of high quality directory and directory assistance choices. Specifically, residential and business customers throughout the U.S. have multiple alternatives that are comparable in both function and price to 411 DA services. For example, consumers can dial "00" to reach many IXCs' DA services; 10-10-ATT-00 and 1-800-CALLATT to reach AT&T's DA services; 10-10-9000 to reach MCI's DA service; and "411" for CLEC and wireless carriers' DA services. Further, print directories and innumerable Internet websites, such as www.anywho.com, www.yahoo.com and www.whitepages.com, provide consumers access to DA and directory services.

Nor is there any evidence that consumers even want a separate directory assistance presubscription system. The vast majority of consumers make two or fewer DA calls per month and studies show that consumers are seeking the simplicity offered by one-stop shopping, not the additional complexity that would result from implementation of the NPRM proposals.

While the proposals on which the Commission seeks comment would thus offer little, if any benefit, their costs would be considerable. In the absence of a clearer and more complete articulation of these proposals, it is impossible to quantify with precision their exact cost. Based on the information available, however, SBC can estimate some of the costs of these proposals. While the actual costs would be higher, 411 presubscription, based on an AIN network, would cost in excess of $45 million. The alternative proposal of switched-based 411 presubscription would cost in excess of $600 million. The alternative dialing proposals also would be astronomical to implement. SBC estimates that CACs would cost SBC several million; 555 would cost in excess of $14 million, if AIN-based, and $431 million if switch-based; and 411XX would cost hundreds of millions of dollars to implement. Moreover, these alternative dialing methods would degrade the quality of DA service available to consumes and introduce a whole new level of consumer confusion.

Finally, far from furthering the primary goals of the Act — promoting competition and investment in advanced capabilities — these proposals would have the opposite effect. ILECs and CLECs alike are struggling to overcome the effects of an economic recession that has hit the telecommunications sector particularly hard. Thousands of workers have been laid off and capital investment has been dramatically reduced as market capitalizations have plummeted. Under these circumstances, the *last* thing the Commission ought to be doing is reducing the revenue opportunity available to carriers that compete in the local exchange market by siphoning

such revenues to entities that provide no local service at all. Such measures would discourage CLECs from entering the local market and divert resources that could be used to fund new investment in advanced infrastructure.

II. THE COMMISSION HAS NO AUTHORITY TO MANDATE 411 PRESUBSCRIPTION OR TO ASSIGN ALTERNATIVE DIALING METHODS FOR DA.

In the Notice, the Commission asked whether the Act authorizes it to require 411 presubscription or assign alternative dialing methods for DA. In particular, it asked whether Section 251(b)(3) provides the requisite authority, noting that it previously has concluded that, because Section 251(b)(3) only requires LECs to provide nondiscriminatory DA access to competing providers of telephone exchange or telephone toll service, only competing DA providers that are LECs, agents of LECs, or provide call completion qualify for the benefits of Section 251(b)(3).[5] The Commission further asks whether it can rely on Sections 201(b) and 202(a), or 251(e)(1) to mandate 411 presubscription or assignment of alternative dialing methods for DA if Section 251(b)(3) does not provide the necessary authority.[6]

None of these provisions authorize the Commission to mandate 411 presubscription or assign alternative dialing methods for DA. As discussed below, dialing parity, by definition, relates only to the provision of a telecommunications service by a telecommunications carrier that provides telephone exchange and telephone toll service. Because DA service does not meet the statutory definition of a "telecommunications service," it does not fall within the ambit of Section 251(b)(3). In addition, only telecommunications carriers that provide telephone

[5] NPRM ¶ 10, citing *Provision of Directory Listing Information Under the Telecommunications Act of 1934, as* Amended, CC Docket 99-372, *First Report and Order*, 16 FCC Rcd 2736, 2743-49 (*SLI/DA First Report and Order*).

[6] *Id.* ¶ 10-11.

exchange service and telephone toll service are entitled to the benefits of Section 251(b)(3). LECs therefore have no obligations under Section 251(b)(3) (including the obligation to provide dialing parity) to competing providers of DA service that do not provide telephone exchange service and telephone toll service.

Sections 201(b) and 202(a) fare no better. While those provisions generally permit the Commission to adopt rules to ensure that carriers' rates, practices, classifications and regulations are just and reasonable, and not unreasonably discriminatory, they do not authorize the Commission to ignore the specific limits Congress imposed on the Commission's authority in other Sections, including Section 251(b)(3). Because Congress specifically limited an LEC's obligation to extend the benefits of Section 251(b)(3) only to telecommunications service provided by providers of telephone exchange and telephone toll service, the Commission cannot do an end run around those limits and rely on its more general authority under Sections 201(b) and 202(a) to require 411 presubscription or alternative dialing methods for DA.

Section 251(e) likewise does not authorize the Commission to require 411 presubscription or alternative dialing methods for DA. That provision only grants the Commission authority over numbering; that is, the assignment of telephone numbers for particular purposes. It does not extend to the routing of telecommunications traffic based on the number dialed — that is a dialing parity issue, which is the subject of Section 251(b)(3). The Commission therefore cannot circumvent the limits of Section 251(b)(3) by relying on its numbering administration authority under Section 251(e).

A. The Commission Cannot Require 411 Presubscription or Alternative Dialing Methods for DA Pursuant to Section 251(b)(3).

Section 251(b)(3) does not authorize the Commission to require 411 presubscription or mandate alternative dialing methods for DA. That Section imposes two obligations on local

exchange carriers. First, it requires LECs "to provide dialing parity to competing providers of telephone exchange service and telephone toll service."[7] Second, it requires LECs "to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[8] Neither requirement authorizes the Commission to require 411 presubscription or alternative dialing methods for DA.

1. A LEC's Obligation to Provide Dialing Parity Does Not Extend to Directory Assistance.

The Commission cannot extend a LEC's obligation to provide "dialing parity" under Section 251(b)(3) to require 411 presubscription or alternative dialing methods for DA services. Under the Act, "dialing parity" is defined to mean "that a person that is not an affiliate of a local exchange carrier is able to provide *telecommunications services* in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the *telecommunications services provider* of the customer's designation from among two or more *telecommunications service providers* (including such local exchange carrier)."[9] Dialing parity thus is limited to dialing for the provision of a "telecommunications service" by a telecommunications service provider.

However, directory assistance services are not "telecommunications services." Under the Act, the term "telecommunications service" is defined in relevant part as "the offering of telecommunications for a fee directly to the public."[10] "Telecommunications," in turn, is defined

[7] 47 U.S.C. § 251(b)(3).

[8] *Id.*

[9] 47 U.S.C. § 153(15).

[10] 47 U.S.C. § 153(46).

as "the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received."[11] A telecommunications service thus is the offering of "transmission" services to the public. A provider of directory assistance services, however, does not provide "transmission" services; to the contrary, it *uses* transmission services to provide information (that is, directory listing information) to its customers. Because a directory assistance service is not pure "transmission," it plainly is not a telecommunications service under the Act.

That is not the say that DA services — at least when offered by LECs — are not "adjunct-to-basic" services under the Commission's *Computer II* regime.[12] They are because the Commission has classified them as such. But "adjunct-to-basic" services are not telecommunications services, as defined in the Act. Rather, as noted, telecommunications services are pure transmission services, and "adjunct-to-basic" services are a category of services that involve more than pure transmission but which the Commission has elected not to treat as "enhanced" services under its *Computer II and III* regimes.

Indeed, a DA service provided by an entity that does not also provide telecommunications services is not even an adjunct-to-basic service, much less a telecommunications service. In *Computer II*, the Commission concluded that carriers could offer certain enhanced services (*i.e.*, "adjunct-to-basic" services) "in conjunction with basic telephone service" because those services facilitated use of traditional telephone services.[13] Where a DA

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[11] 47 U.S.C. § 153(43).

[12] *Amendment of Section 64.702 if the Commission's Rules and Regulations*(*Second Computer Inquiry*), Docket No. 20828, *Final Decision*, 77 FCC2d at 421(1985)(*Computer II Final Decision*)

[13] *North American Telecommunications Association Petition for Declaratory Ruling under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer*

provider does not provide directory assistance service "in conjunction with basic telephone service," its directory assistance offering could not possibly be an "adjunct-to-basic" service. In fact, the Common Carrier Bureau has already concluded that such an entity does not offer a telecommunications service.

Specifically, in INFONXX v. NYNEX, the Common Carrier Bureau rejected a claim that NYNEX unlawfully had denied INFONXX unbundled access to NYNEX's directory assistance database in violation of Section 251 on the ground that a directory assistance service was not a "telecommunications service."[14] The Bureau concluded that, in providing directory assistance service, INFONXX did not provide the transmission of information, but rather "merely use[d] the transmission services of others to provide information to its customers."[15] The Bureau therefore found "untenable" INFONXX's contention that "its DA service is a telecommunications service."[16] The Bureau further noted that the Commission recently had affirmed that entities (like DA service providers) that do not provide a transmission path "are not providers of telecommunications," and therefore are not subject to the universal service obligations of the Act.[17]

Premises Equipment, ENF No. 84-2, *Memorandum Opinion and Order*, 101 FCC2d 349, 358 (1985) (*NATA Centrex Order*), citing *Final Decision*, 77 FCC2d at 421.

[14] *INFONXX v. NYNEX*, 13 FCC Rcd 10288 (1998) (*INFONXX*).

[15] *Id* ¶12.

[16] *Id.*

[17] *Id.* ¶ 12, n. 49, *Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Report to Congress*, 13 FCC Rcd 11501, ¶ 41 (1998) (stating that "an entity should be deemed to provide telecommunications . . . only when the entity provides a transparent transmission path."). SBC notes that were the Commission erroneously to conclude that DA constitutes a telecommunications service, providers of DA services would be liable for universal service support).

Likewise, in the *SLI/DA First Report and Order*, the Commission concluded that DA providers that only provide directory assistance services are not entitled to the benefits of Section 251(b)(3).[18] Plainly, if a provider of stand-alone directory assistance service was providing a telecommunications service, the Commission would not have so concluded.

To be sure, the Commission previously has said that telecommunications services include "adjunct-to-basic" services. These conclusions are flatly inconsistent with the plain language of the Act.[19]

In one of the cases in which the Commission said that telecommunications services include "adjunct-to-basic" services,[20] the Commission relied solely on its *NATA Centrex Order*.[21] However, in that order, the Commission did not find that "adjunct-to-basic" services are "telecommunications services," nor did it find that "adjunct-to-basic" services are "transmission." Rather, it found only that, although "adjunct-to-basic" services fall within the "literal" definition of "enhanced services," such services nonetheless would not be categorized as

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[18] *SLI/DA First Report and Order*, 16 FCC Rcd at 2744-50. *See also*, *Implementation of the Telecommunications Act of 1996*, *Third Report and Order*, CC Docket No. 96-115, Second Order on Reconsideration, CC Docket No. 96-98, and *Notice of Proposed Rulemaking*, CC Docket No. 99-273, FCC 99-227 ¶ 184 (rel. Sept. 9, 1999) (tentatively concluding that a DA provider that does not provide telephone exchange service or telephone toll service is not entitled to the benefits of Section 251(b)(3), and noting that the Common Carrier Bureau had reached the same conclusion in *INFONXX*).

[19] SBC itself previously has characterized directory assistance services as telecommunications services; to the extent it has done so, it too was wrong.

[20] *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, *Report and Order and Further Notice of Inquiry*, 16 FCC Rcd 6417, ¶ 77 (rel. Sept. 29, 1999) (*Section 255 Implementation Order*).

[21] *Id.*, citing *North American Telecommunications Association Petition for Declaratory Ruling under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment*, ENF No. 84-2, *Memorandum Opinion and Order*, 101 FCC2d 349 (1985)(*NATA Centrex Order*).

enhanced, but rather would be treated as "basic" services for regulatory purposes.[22] Adjunct-to-basic services therefore could be offered on a tariffed basis, and did not have to be offered through a separate subsidiary in the case of carriers subject to structural separation.[23] The *NATA Centrex Order* thus says nothing about whether "adjunct-to-basic" services (in particular, directory assistance) are transmission and thus meet the *statutory* definition of a "telecommunications service." In fact, the order predated the 1996 Act by 11 years. The Commission's reliance on the *NATA Centrex Order* thus was misplaced.

In the *Non-Accounting Safeguards Order*, the Commission again relied on the *NATA Centrex Order* to hold that "adjunct-to-basic" services should be classified as telecommunications services, rather than information services.[24] In addition, though, the Commission articulated another ground. It concluded, without analysis, that "adjunct-to-basic" services "also are covered by the 'telecommunications management exception' to the statutory definition of information services, and therefore are treated as telecommunications services under the 1996 Act."[25]

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[22] *NATA Centrex Order*, at 359-61.

[23] *Id.* at 361 (holding that any Centrex feature that fell within the definition of "enhanced services" in Section 64.702(a) of the Commission's rules would "be considered enhanced unless it [fell] within the narrow category of adjunct[-to-basic] services").

[24] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905, 21958, ¶ 107 (1996) (*Non-Accounting Safeguards Order*).

[25] *Id.* Section 3(26) provides that the term "information services" means "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, . . . but does not include any use of any such capability for the management, control, or operation of a telecommunications system, or the management of a telecommunications service." 47 U.S.C. § 153(26).

This is incorrect. The statutory definition of "telecommunications services" says nothing about telecommunications management functions; that reference is housed in the definition of information services. Thus, whether or not DA services even meet this carve-out from the definition of information services is irrelevant to whether they are telecommunications services.

In any event, DA services do not fall within this carve-out even when they are provided by a LEC, and they certainly do not fall within this carve-out when provided by an entity that does not provide telecommunications services at all.[26] Directory assistance does not in any sense use information for the "management, control, or operation of a telecommunications system," nor does it use information to "manage[] a telecommunications service."[27] It simply allows a customer to retrieve information (telephone numbers) from a database in the telephone network. Thus, notwithstanding the Commission's decisions in the *Section 255 Implementation Order* and the *Non-Accounting Safeguards Order*, directory assistance services are not within the carve-out that would exclude them from the definition of information service.

Moreover, the "telecommunications management exception" could not apply to a provider of stand-alone directory assistance service, like Telegate, even if it could apply to directory assistance service provided by a telecommunications carrier. The "telecommunications management exception" applies only if the retrieval, storage, use, processing, *et cetera* of information is used "for the management, control, or operation of a telecommunications system" (*i.e.*, a system used to provide *transmission*) or "the management of a telecommunications

[26] SBC notes that, in concluding that adjunct-to-basic services should be classified as telecommunications services in the *Non-Accounting Safeguards Order*, the Commission did not analyze whether and how the "telecommunications management exception" should apply to each adjunct-to-basic service. Thus, it is far from clear that the Commission concluded that the "telecommunications management exception" properly applies to all adjunct-to-basic services. To the extent it did so, its conclusion was incorrect.

[27] 47 U.S.C. § 153(20).

service."[28] A provider of stand-alone directory assistance service, like Telegate, that does not provide call completion (*i.e.*, telecommunications), could under no stretch of the imagination be said to be managing, operating or controlling a "telecommunications system." Nor is it using information processing to "manage a telecommunications service." Thus, the "telecommunications management exception" does not apply to a directory assistance service offered on a stand-alone basis.

The Commission therefore cannot, consistent with the language and structure of the Act, as well as its own precedent, conclude that directory assistance is a "telecommunications service." Nor, consequently, can it conclude that a LEC's obligation to provide dialing parity under Section 251(b)(3), which, as discussed above, is limited to dialing for the provision of a "telecommunications service" by a telecommunications provider, extends to directory assistance services. The Commission therefore cannot require 411 presubscription or alternative dialing methods for DA under Section 251(b)(3).

2. The benefits of Section 251(b)(3) are limited to providers of telephone exchange or telephone toll service.

There is another reason the Commission may not require a LEC to provide dialing parity to providers of stand-alone DA under Section 251(b)(3). The Act unambiguously requires a LEC to provide the benefits of Section 251(b)(3) *only* to competing providers of "telephone exchange service and telephone toll service."[29] And providers of stand-alone directory

[28] 47 U.S.C. § 153(20).

[29] In particular, Section 251(b)(3) requires a LEC "to provide dialing parity to competing providers of *telephone exchange service and telephone toll service*," and "to permit all *such providers* to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays." 47 U.S.C. § 251(b)(3).

assistance do not provide "telephone exchange service," nor do they provide "telephone toll service."

Section 3(47) of the Act defines "telephone exchange service" as:

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers *intercommunicating service* of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge; or (B) *comparable service* provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.[30]

And "telephone toll service" is defined as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."[31]

Plainly, a provider of stand-alone directory assistance service does not provide "telephone exchange service" or "telephone toll service." In particular, stand-alone directory assistance would not permit subscribers to "intercommunicate" with other subscribers or to connect "stations in different exchange areas," but rather would only furnish subscribers directory information. A provider of stand-alone directory assistance service therefore would not provide a "telephone exchange service" or a "telephone toll service" as defined by the Act. Because a provider of stand-alone directory assistance thus would not be a "competing provider of telephone exchange service and telephone toll service," a LEC has no obligation to provide the benefits of Section 251(b)(3) to such a DA provider.

Indeed, the Commission already has so held. In the *SLI/DA First Report and Order*, the Commission concluded that a LEC has no obligation to provide dialing parity to a competing DA

[30] 47 U.S.C. § 153(47).

[31] 47 U.S.C. § 153(48).

provider if such a provider does not offer call completion services, act as an agent of a CLEC, or is not itself a LEC.[32] The Commission based this conclusion on its determination that a provider of stand-alone directory assistance service "is not providing telephone exchange service within the meaning of Section 3(47)."[33]

Likewise, as discussed above, the Common Carrier Bureau found that a provider of stand-alone directory assistance service did not provide telephone exchange service or telephone toll service as defined by the Act.[34] The Bureau noted that the Commission previously had determined that "entities that are not providers of telephone exchange or telephone toll service are not entitled to the protection available to competing providers under Section 251(b)(3)."[35] The Bureau concluded that INFONXX, which offered stand-alone directory assistance service, therefore could not benefit from Section 251(b)(3).[36] Because the benefits of Section 251(b)(3) thus do not extend to providers of stand-alone directory assistance service, the Commission cannot rely on that provision to require LECs to offer 411 presubscription or alternative dialing methods to such directory assistance providers.

3. The Commission Cannot Require 411 Presubscription or Alternative Dialing Methods for DA Based on a LEC's Nondiscrimination Obligations Under Section 251(b)(3).

[32] *SLI/DA First Report and Order*, 16 FCC Rcd at 2746-47.

[33] *Id.* Although the Commission did not expressly address whether a stand-alone directory assistance service is a "telephone toll service," its rationale applies equally to telephone toll service.

[34] *INFONXX*, 13 FCC Rcd at 10293-94.

[35] *Id.* at 10294, citing *Local Competition Second Report and Order*, 11 FCC Rcd 19392-19538 (1996) (stating that telecommunications carriers that are not providers of telephone exchange service or telephone toll service are not covered by Section 251(b)(3)).

[36] *Id.* ("The language in 251(b)(3) is *unambiguous*. In the absence of clear Congressional intent to the contrary, we must interpret the Act's provisions according to their plain meaning," citing *U.S. v. James*, 478 U.S. 596, 606 (1986)).

The Commission also cannot mandate 411 presubscription or alternative dialing methods for DA services based on a LEC's nondiscrimination obligations under Section 251(b)(3). Section 251(b)(3) provides that, in addition to the duty to provide dialing parity for telecommunications services, a LEC must "permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[37] Thus, under the plain language of Section 251(b)(3), a LEC is required to provide nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings only to the extent they will be used in conjunction with telephone exchange and telephone toll services. Indeed, the Commission already has concluded that a LEC's nondiscrimination obligations under Section 251(b)(3) are thus limited. As discussed above, in the *SLI/DA First Report and Order*, the Commission determined that a LEC was required to provide nondiscriminatory access to directory assistance databases to a provider of directory assistance services only if the DA provider provides such services in conjunction with telephone exchange service or telephone toll service.[38] Thus, the Commission cannot require 411 presubscription or alternative dialing methods for stand-alone DA services pursuant to the nondiscrimination requirements in Section 251(b)(3).

[37] 47 U.S.C. § 251(b)(3).

[38] *Provision of Directory Listing Information Under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, *First Report and Order*, 16 FCC Rcd 2736, 2746-47 (2001) ("If a competing directory assistance provider does not complete the call either through its own facilities or through resale and impose a separate charge for such service, but rather simply passes a call to another entity that provides all elements of call completion (i.e. that completes that call and charges the customer for the service), the competing directory assistance provider is not providing telephone exchange service within the meaning of Section 3(47).").

In addition, the Commission already has defined the parameters of a LEC's nondiscrimination obligations under Section 251(b)(3). In particular, it has concluded that a LEC satisfies those obligations if it allows a competing provider of telephone exchange service and telephone toll service to obtain access to the LEC's local DA databases, and has complied with such provider's reasonable and technically feasible request to rebrand DA service in such provider's name or to remove the providing LEC's brand name.[39] There is no reason for the Commission to alter this conclusion, and thus expand a LEC's nondiscrimination obligations under Section 251(b)(3) by mandating 411 presubscription or alternative dialing methods for DA services. In any event, as discussed in the preceding paragraph, the Commission could not so expand those obligations consistent with the plain language of the statute.

B. The FCC cannot rely on Sections 201, 202 and 251(e) to require 411 presubscription or alternative dialing methods.

The Commission asks, in the alternative, whether it has statutory authority under Sections 201(b), 202(a) and 251(e) to require 411 presubscription or alternative dialing methods for directory assistance. Clearly, the answer is no. Section 201(b) grants the Commission general authority to ensure that a common carrier's practices are just and reasonable, and to prescribe rules as necessary to carry out the provisions of the Act.[40] Section 202(a) grants the Commission general authority to ensure that a common carrier's practices are not unjust or unreasonably

[39] See NPRM ¶ 8, citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, 19461-63 (1996) (*Second Report and Orde*r) *vacated in part, People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *rev. AT&T Corp. v. Iowa Util. Bd.*, 119 S. Ct. 721 (Jan 25, 1999). *See also Second Report and Order*, 11 FCC Rcd at 19399 ("Section 251(b)(3) of the 1996 Act directs each local exchange carrier (LEC) to provide dialing parity to competing providers of telephone exchange service and telephone toll service.").

[40] 47 U.S.C. § 201(b).

discriminatory.[41] Section 251(e) grants the Commission the authority to designate an impartial entity to administer "telecommunications numbering" and to make such numbers available on an equitable basis.[42] None of these statutory provisions bears any relation to dialing parity or provides any authority for establishing a new dialing parity requirement. Rather, Congress expressly granted the Commission limited authority to establish dialing parity obligations in Section 251(b)(3), which the Commission correctly has relied on as the statutory authority for its existing presubscription requirements.

The Commission cannot evade its limited authority under Section 251(b)(3) by relying on its more general authority under Sections 201, 202, or 251(e). These more general grants of authority cannot trump the particular provision of the Act — Section 251(b)(3) — that deals with the "narrow, precise, and specific subject" at hand.[43] It is a bedrock rule of statutory interpretation that a specific statutory provision is not superceded by a more general one.[44] The Supreme Court has explained that "[t]he reason and philosophy of the rule is that, when the mind of the legislator has been turned to the details of a subject, and he has acted upon it," a general provision "shall not be considered as intended to affect the more particular or positive" provision.[45] Thus, as the D.C. Circuit has explained, an agency "cannot rely on its general

[41] 47 U.S.C. § 202(a).

[42] 47 U.S.C. § 251(e)(1).

[43] *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976).

[44] *See Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) ("Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment."); *Bulova Watch Co. v. United States*, 365 U.S. 753, 758 (1961); *In re Sealed Motion*, 880 F.2d 1367, 1374 (D.C. Cir. 1989); 2A *Sutherland Statutory Construction* (Sands, 1972, § 51.05, p. 315) ("Where there is no clear intent otherwise, a specific statute will not be controlled by a general one, regardless of priority of enactment.").

[45] *Radzanower*, 426 U.S. at 153 (citing T. Sedgewick, The Interpretation and Construction of Statutory and Constitutional Law 98 (2d ed. 1874)).

authority to make rules necessary to carry out its functions when a specific statutory directive defines [its] relevant functions . . . in a particular area."[46]

Indeed, requiring 411 presubscription or alternative dialing methods for directory assistance under the guise of exercising authority under Sections 201(b), 202(a) or 251(e) would directly contravene the express statutory limitations of Section 251(b)(3). As previously discussed, dialing parity, by definition, applies only to telecommunications services. Congress adopted Section 251(b)(3) to facilitate competition among telecommunications carriers by giving them nondiscriminatory access to DA service. The specific statutory limitations on the dialing parity obligation would be rendered meaningless if the Commission were free to adopt much broader obligations under other provisions of the Act.

Courts have consistently held that the Commission cannot flout the intent of Congress by disregarding clear statutory language. In *AT&T v. Iowa Utilities Board*, for example, the Supreme Court set aside the Commission's rules implementing the "impairment" standard of Section 252(d)(2) because they were inconsistent with the statute. Specifically, the court found that the Act required the Commission to give meaning to the impairment provision of Section 252(d)(2) and apply some limiting standard on the availability of unbundled network elements.[47] As the Supreme Court stated:

> We cannot avoid the conclusion that, [if Congress had wanted to give blanket access to incumbents' networks on a basis as unrestricted as the scheme that Congress has come up with, it would have included § 251(d)(2) in the statute at all.] It simply would have said (as the Commission in effect has) that whatever requested element can be provided must be provided.[48]

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[46] *American Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995).

[47] *AT&T v. Iowa Util. Bd.*, 525 U.S. 366, 388 (1999).

In this case, Congress expressly limited the Commission's authority over dialing parity to telecommunications services in Section 251(b)(3). The Commission cannot avoid this limitation by relying on alternative sources of authority elsewhere in the Act to support the establishment of a new 411 presubscription or alternative dialing method requirement for directory assistance.

Moreover, there is no basis to conclude that 411 presubscription or an alternative dialing method for directory assistance is justified by the statutory requirements of Sections 201(b), 202(a) or 251(e). A presubscription requirement is not "necessary in the public interest" under Section 201(b) or required to ensure that carrier practices are not unjust or unreasonably discriminatory under Section 202(a). Competitive telecommunications carriers already have nondiscriminatory access to DA service and are using such access to successfully compete in the local exchange market. Nor does Section 251(e) authorize the Commission to require 411 presubscription or alternative dialing methods for DA. That provision only grants the Commission authority over numbering; that is, the assignment of telephone numbers for particular purposes. It does not extend to the routing of telecommunications traffic based on the number dialed — that is a dialing parity issue, which is the subject of Section 251(b)(3). Thus, Sections 201(b), 202(a) and 251(e)(1) do not provide alternative sources of statutory authority for requiring 411 presubscription

III. THERE IS NO BENEFIT TO REQUIRING 411 PRESUBSCRIPTION, ALTERNATIVE DIALING CODES, OR ELIMINATING 411.

Even if the Commission has the requisite authority — which it does not — it should not implement any of the proposals presented here because they offer no benefits to consumers. In the NPRM, the Commission asks for comment on the current state of competition in the DA

market, whether LEC "monopoly" of the 411 access code is a barrier to competition, and whether existing competition in the DA market demonstrates that 411 is not a barrier to competition. As SBC demonstrates below, the DA market is robustly competitive, thus use of the 411 code is not a barrier to competition. Further, the marketplace currently provides meaningful benefits to consumers, rendering the extraordinary proposals presented in this proceeding unwarranted.

A. There is vigorous competition in the DA market.

Competition is thriving in the DA market. On the telephony side, there are numerous CLECs providing retail DA as part of their telecommunications services in every ILEC region through resale of ILEC DA, UNE-P arrangements, or their own facilities. In addition toll providers offer retail directory assistance and at least three toll providers — AT&T, Sprint and MCI — provide DA in every market.[49] Multiple wireless providers also provide DA. As the NERA report demonstrates, wireless DA call volumes have increased significantly between 1997 and 2000 —10.5% in 1998, 11.6% in 1999 and 12.6% in 2000, and are forecasted to continue to grow.[50] In fact, wireless DA volumes already amount to 20 percent of the total combined local and long distance wireline DA volumes. As wireless subscribership increases — an estimated 26 percent per year — wireless DA volumes will continue to increase,[51] thereby translating into

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[49] Toll providers successfully provide DA without using the 411 access code. AT&T, Sprint and MCI customers, for example, can dial "00" to receive AT&T, Sprint and MCI's DA services, a code just as easy to remember as 411; MCI's customers also can dial 10-10-9000 to reach its DA services; and any consumer can dial 1 + area code and 555-1212 — which has been used for years by consumers — to receive DA service from their presubscribed intraLATA or interLATA toll carrier. Further, toll-free numbers can be used to reach other DA providers.

[50] National Economic Research Association Inc.: William E. Taylor and Harold Ware, *Competition and Registration for Directory Assistance Services*, April 1, 2002 (*NERA*) at 17, Attachment 1.

[51] According to a recent USA Today Article, 18% of Americans use cellular phones as their primary phone. Further, the article cites a survey estimating that 2.3 million subscribers will use only wireless

even greater competition in the DA market. This competition has resulted in a marked decline in Bell Company DA volumes — at least 10 percent per year since 1997. This is precisely the type of competition Congress envisioned and alone demonstrates that the DA market is competitive.

In addition to the foregoing, other products and independent firms are active participants in the DA market and must be considered in gauging the competitiveness of the DA marketplace.[52] Printed directories, for example, are a viable competitor to telephony DA. They are used extensively by subscribers, and importantly are used more often than telephony DA. A Bell Atlantic DA survey revealed that over a 30-day survey period, 83 percent of the respondents used printed telephone directories for DA compared to only 54 percent that used 411 DA service.[53] Another study, First Market Research's *The Consumer Sources of Listing Information Study: A Multi Subscriber Study*, showed that 5.7 times as many people rely on their local yellow or white pages as their primary source for DA, compared to 411 DA.[54]

Internet services and CD ROMs are other formidable and growing competitors to telephony DA.[55] As the NERA report details, NTIA has determined that 54 percent of households have access to the Internet,[56] and that the Internet is becoming increasingly

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phones in their homes in 2006. Michelle Kessler, *18% See Cellphones as Their Main Phones*, USA TODAY, February 1, 2002, at B.01.

[52] Kelsey Group, Consumers have Choices, at 1-4, Attachment 2.

[53] *NERA* at 19.

[54] Specifically, 40 percent of consumers rely on printed directories as their primary source, 7 percent rely on local DA as their primary source and 53 percent rely on other sources for DA.

[55] Some of the companies offering Internet DA services in competition with LEC DA services include: AT&T (www.anywho.com); Switchboard (www.switchboard.com); AOL (www.aol.com); Yahoo (www.yahoo.com); Infospace (www.infospace.com); Whitepages.com (www.whitepages.com); 911, Inc. (www.411.com); and Zip2 (www.zip2.com).

[56] *NERA* at 22.

accessible to all sectors of the population. According to a recent study of Internet users, respondents reported that they used online directory services (0.7 times a week) as much as they use local DA telephone service (0.6 times per week) and more than national DA service (0.3 times per week).[57] This study is consistent with other reports projecting that over 1 billion visits would be made to Internet directory websites in 2001, and that Internet directory usage will grow cumulatively at a rate of 34% per year through 2006.[58] CD ROMs also offer directory services and importantly enable consumers to initiate calls to requested listings.

This competitive landscape, of course, is not news to the Commission. As the Commission correctly determined two years ago in the *UNE Remand Order*, "Competition in the provision of operator services and directory assistance has existed since divestiture."[59] Further, the Commission concluded, "the record demonstrates that a variety of alternative providers of OS/DA offer services at comparable cost and quality to those of the incumbents."[60] Given the robust state of DA competition, there simply is no justification for requiring 411 presubscription or alternative dialing codes.

B. The Marketplace is providing meaningful benefits to consumers.

As would be expected, consumers are reaping the benefits of this competition. CLECs provide DA service. Wireless providers offer traditional DA as well as enhanced DA services. For example, Verizon Wireless uses INFONXX as its DA provider and INFONXX offers

[57] *NERA* at 23.

[58] *Id.*

[59] *In re Implementation of the Local Competition Provision in the Telecommunication Act of 1996*, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696 ¶ 447.1999) (*UNE Remand Order*).

[60] *Id*.

Verizon Wireless customers enhanced services such as movie listings and show times, category searches (e.g. doctors, florists), sports scores and weather conditions.[61] Print directories offer traditional DA listings as well as enhanced features. For example, business yellow pages provide value-added information such as location directions, days and hours of operation, payment methods, consumer products provided and a host of other details that currently cannot be provided by LECs as part of their DA services over 411. Internet providers offer dynamic, enhanced directory services such as maps, driving directions, multiple category searches, and links to related websites. Likewise, CD-ROM-based DA products offer innovative, enhanced DA. In light of existing DA competition, DA providers will continue to enhance their DA or directory services, translating into additional directory choices for consumers. Costly proposals such as 411 presubscription and alternative dialing methods, therefore, are unnecessary to provide consumers the benefits competition already has successfully achieved.

Further, the existence of a vibrant wholesale market bolsters retail competition because it provides carriers, particularly start-up carriers, the ability to offer their customers a high quality of service. The Commission has already concluded that the wholesale DA market is competitive, and as a result does not require ILECs to provide DA as an unbundled network element.[62] Independent wholesale DA providers, in fact, have captured almost 50% of the wholesale DA market[63] and CLECs and wireless providers are taking full advantage of their ability to use independent wholesale providers for their DA offerings. The marketplace, accordingly, is working effectively to give consumers the choices they need and desire.

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[61] *NERA* at 18.

[62] *UNE Remand Order*, 15 FCC Rcd at 3891, 3894.

[63] *NERA* at 27.

C. There is no evidence of consumer demand for 411 presubscription or alternative dialing codes.

For over two years, Telegate has argued that 411 presubscription would benefit consumers, but has yet to provide any evidence of consumer support or demand for this proposal. The fact is the majority of consumers — 60-80 percent — make one or fewer DA calls per month.[64] Consumer demand simply is insufficient to warrant implementation of the extraordinary proposals presented here.

In addition, 411 presubscription adds a level of complexity, not simplicity. Studies show that consumers value simplicity, and seek one-stop shopping.[65] There is no evidence suggesting that consumers are willing to pay to have additional presubscription choices for DA providers. It would be bad public policy to require carriers to implement such costly proposals — costs which ultimately would be borne by consumers — given the low consumer demand for DA service. Further, states regulate DA services. While DA regulations vary by state, most states impose DA service quality measures, require ILECs to offer a minimum number of DA calls per month free of charge, and free DA calls to certain customer groups (e.g. disabled customers). CLECs and independent firms are not subject to these requirements. 411 presubscription would create additional regulations on ILECs, further increasing the asymmetric burdens imposed on the ILECs.

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[64] *Id* at 43.

[65] *Id* at 40.

IV. THE COSTS OF IMPLEMENTING 411 PRESUBSCRIPTION, ALTERNATIVE DIALING CODES, OR 411 ELIMINATION WOULD FAR EXCEED ANY OF THE PURPORTED BENEFITS.

As demonstrated above, there are no consumer benefits to 411 presubscription, alternative dialing codes or 411 elimination. But even if there were, these incremental benefits are far outweighed by the astronomical costs of implementing these proposals.

The alternatives proposed in the NPRM would impact various parts of the public switched telephone network (PSTN). Implementing the alternatives in the NPRM would require either a switch-based solution (impacting the transport layer[66]) or an Advanced Intelligent Network (AIN)-based solution (impacting the control layer[67]). All of the proposed alternatives would impact the transport layer of the PSTN due to the increased number of DA providers that would need to physically interconnect their DA platforms to the PSTN. This would require the addition of trunk ports in switches, as well as transport facilities over which to place those trunks. In addition, some alternatives would require adding new components to the PSTN. Other alternatives would require reprogramming portions of the PSTN.

Technical and economical feasibility for each of the NPRM's proposals is unlikely because of the following:

- Certain switch technologies are no longer receiving significant new development from the manufacturer; and, it is not likely that vendors would agree to further develop these

[66] The transport layer physically carries the voices back and forth over the network. The transport layer of the telephone network consists principally of Class 5 circuit switches, called end office switches, and Class 4 circuit switches, called tandem switches. The physical facilities connecting them are usually copper or fiber. These switches, using trunks that are transported over the physical facilities, connect the switches when there is a call to be placed, physically transporting our voices from sender to receiver.

[67] The control layer is a signaling network, entirely separate from the transport layer, performing a variety of functions, including direct- and alternate-call route determination. The control layer consists of many elements and protocol, including Common Channel Signaling (CCS)/Signaling System 7 (SS7) Protocol, Service Control Points (SCPs), Signal Transfer Point (STPs), and the Service Management System (SMS).

switches. Therefore, replacement would be required, which would significantly impact the overall cost implications.

- The existing 411 platform (DA calls) does not allow billing records to be created from the end-office switch. Billing is recorded in the OS/DA switch. None of the alternatives proposed in the NPRM address call recording for billing purposes; again a significant cost implication to all proposals. It appears cost prohibitive for DA providers to connect to each local switch.
- Certain alternatives would require that significant translations be added to the switching software, thereby creating switch memory limitation issues. Enhancing the memory capabilities in switches would have significant cost implications.
- Some alternatives might require a change to the national dialing plan. Dialing plan changes would not only require physical work in each end office switch, but would also require significant customer education.
- Feature interactions are overlooked with these proposals. These proposals have detrimental effects on 911, 311, 711, and UNE/UNE-P usage.

Below, SBC addresses each proposal in turn.

A. 411 Presubscription

Since inception of this proceeding in 1999, the record has demonstrated that implementation of 411 presubscription would require significant technical changes, costs for which would be excessively expensive. Whether AIN-based or switched-based, 411 presubscription would, at a minimum, require significant changes to billing and service order systems, interoffice signaling, switches, and AIN triggers. These changes would be extremely expensive to implement. SBC cannot provide a precise estimate of the costs for 411 presubscription given the sketchy nature of the proposal. However, its best guess is that it would cost SBC alone, more than $45 million, excluding unknown costs, to implement AIN-based presubscription, depending on the network model. SBC estimates it would cost SBC in excess of $600 million, excluding tandem trunking and unknown costs, to implement switched-based 411 presubscription. In addition to these upfront implementation costs, Telegate's proposal could impose significant ongoing expenses. While additional costs should be borne by the cost causer

(i.e. entities supporting the proposal), these costs, ultimately, would have to be borne by consumers, a burden that makes no sense given the lack of any benefit of 411 presubscription.

But these are not the only costs. The Commission asks whether 411 presubscription would promote local competition, but the proposal would have exactly the opposite effect. By reducing the revenue stream available to local exchange carriers, including CLECs, Telegate's proposal would discourage competitive entry and reduce local exchange competition. Further, 411 presubscription would hurt carriers by removing a revenue stream for these carriers. 411 presubscription would undoubtedly result in more slamming and it would require the FCC to establish a host of new regulatory requirements that the Commission has not even begun to address. The bottom-line is that 411 presubscription is an extravagant solution in search of a problem and should not be considered further. Below, SBC, to the extent possible, describes the technical issues and associated costs of implementing AIN-based and switch-based 411 presubscription.

1. AIN-BASED 411 Presubscription

The AIN-based 411 presubscription alternative advanced by Telegate and supported by the Celentano affidavit is neither quick, easy, nor inexpensive. Furthermore, in some cases it is not at all clear that it is even technically feasible, since the proposal is not based on the realities of the United States telecommunications network. Celentano estimates it would take only 6 to 9 months and only $22.8 million, industry-wide, to make AIN-based 411 presubscription a reality.

Celentano's estimates are grossly understated and incomplete. Among the elements he fails to account for are: time and expense required to reach industry consensus on service model/service logic; time and expense required to test service logic in each LEC switch type; time and expense required to activate the N11 trigger in each switch (it cannot be done by a

single command from a network operations center; it must be done command-by-command for each switch); time and expense required to test AMA recording in each switch (to ensure proper LEC billing of alternative DA providers for network use); time and expense required to develop interfaces between DA providers and LECs to accept alternative DA provider orders enabling consumers' calls to be routed to them; time and expense required to change service order processes to include consumers' choices of DA providers and ultimately provision those choices; and time and expense required to develop ordering systems for accepting, recording, and disseminating end-user DA selections.

Despite the incompleteness of the proposal, SBC has attempted to assess the costs and to discuss unresolved network and policy issues necessarily implicated by any AIN-based 411 presubscription proposal.

a. AIN Overview

An Advanced Intelligent Network ("AIN") is based upon queries launched to a database in the SS7 signaling network. The database then provides a response in the form of routing instructions which are used to complete calls. The database increases the ability of the signaling network to route calls in many different patterns, depending on the intelligence that is built into the database. There are four main components of the AIN signaling network: the Service Management System ("SMS"), the Signal Control Points ("SCP"), the Signal Transfer Points ("STP"), and the Signal Switching Points ("SSP"). End office switches that are AIN capable act as the SSP. They react to "triggers" programmed into the switches which instruct the SSPs to halt call handling when certain numbers are dialed and to launch a query to an AIN database to receive further instructions on how to handle the call.

The SCP contains the intelligence that tells the switch how to route a call. The STPs act as "traffic cops," congregating queries from the SSPs, sending them to the SCPs, and then sending the SCPs' responses back to the SSPs, which route the calls for call completion.

The SMS is linked to the SCP. It interfaces with other systems, such as service order systems, to update customer records and to download those updates into the SCPs. The SMSs, however, are not directly involved in call handling.

In the 411 presubscription context, the AIN network could be configured as a national SMS, and SCP/STP network, a national SMS and LEC-owned SCP/STP network, or a LEC-owned SMS, and SCP/STP network. Regardless of the network model, a 411 DA call typically would be routed as follows: When 411 was dialed by any customer served out of the AIN-equipped end office switch (the SSP), a query would be launched, passing through the STP (LEC-owned or national) and on to the SCP (LEC-owned). The SCP would then provide routing instructions to the SSP to enable completion of the call to the customer's presubscribed DA provider.

SBC and some other LECs already have existing AIN networks consisting of SMSs, SCPs, and STPs (and SSPs). Celentano proposes adding an additional layer on top of these existing networks—a national SMS/SCP/STP network—to be administered by a third-party database administrator. SBC believes that such a national network could well be technically infeasible. At best, it would add unnecessary expense to an already prohibitively expensive proposition.

b. LEC SMS/STP/SCP Networks Only (No National SMS/SCP/STP Network)

Celentano's proposal to establish a national SMS/SCP/STP network is the worst of all possible AIN-based designs for 411 presubscription. Even in the LNP context, where a national

SMS is used, there is no national SCPs/STPs. Each LEC utilizes its own SMS/SCT/STP network, in conjunction with the national SMS. The national SMS does not perform the various data reformatting, aggregating, storing, and administrative functions required by each LEC's distinct processes, support systems, and vendor-specific SCPs. Each LEC still utilizes its own SMSs, connected to the national SMS, to reformat information received from the national SMS into a form that can be used by its own SCPs.

There are serious technical feasibility issues associated with any proposal for a third party SCP to communicate with any LEC AIN network. Opening up a LEC's AIN network to routing instructions from a third party SCP over which the LEC has no control poses a significant risk that corrupting messages could be sent from the third party SCP, thus endangering the entire AIN network. The AIN network is used to route a multitude of services, including 911 emergency services, and if a corrupting message were to be sent, these services could be blocked.

In the LNP context, there is no direct link between the national SMS and the LEC's AIN network. Rather, the national SMS downloads to each LEC's SMSs. The LEC SMSs download to the LEC SCPs, and it is the LEC SCPs which are directly involved in sending routing instructions within the LEC AIN network. So if a national/regional SMS were deployed, it would not necessarily eliminate the need (and cost) for the LEC to deploy its own SMS.

The Commission previously has considered arguments in favor of opening the LEC AIN networks for receiving routing instructions from third party SCPs. And the Commission has found a lack of evidence of technical feasibility sufficient to order such access. In the *Local Competition Order*, the Commission stated:

> We find that there is not enough evidence in the record to make a determination as to the technical feasibility of interconnection of third party call-related databases to the incumbent LEC's signaling system. Some parties argue that such interconnection, including the interconnection of third party AIN SCP databases, would allow them to

> provide more efficient or advanced call processing and services to customers, thereby increasing their ability to compete with the incumbent LEC…. Incumbent LECs contend that such interconnection would leave their switch vulnerable to a multitude of potential harms because sufficient mediation for such interconnection does not currently exist at the STP or SCP and has not yet been developed.[68]

No evidence has been presented in this proceeding to justify a contrary conclusion.

Furthermore, it makes no sense to have a national database in the 411 context. A national database in the 411 context increases costs and complexities without adding any benefit. Whereas in the LNP context, there is a need for a third party SMS to distribute the same customer record to multiple carriers, in the 411 context the customer record only needs to be distributed to the network of the LEC that serves that customer.

Thus, SBC assumes that an AIN-based 411 presubscription model would not include a national SMS/SCP/STP network. SBC estimates it would take approximately 17 to 24 months, and 2 years, and an estimated $35 million to $45 million (if tandem trunking is involved), for SBC alone to make the required network changes. This sum includes an estimated $21 million to deploy new SCPs and upgrade existing SCPs (along with their supporting SMSs) and $15 million for labor to develop service logics on two distinct platforms, translate switches, upgrade and program operational support systems, engineering the SCPs, and testing and validating the service logics.

In addition, at a minimum, another $ 4 million would be required for retail Information Technologies/Ordering/Billing changes. These changes would take at least 24 months to accomplish. Although the IT/Ordering/Billing work could commence after network planning

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[68] *In Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, ¶ 501 (1996); *See also*, *In the Matter of Intelligent Netwo*rks, CC Docket No. 91-346, *Order*, 13 FCC Rcd 23680, ¶ 4 (1998) and *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, ¶ 407 (1999).

and design is complete, and thus overlap to some extent the network timeline, the IT/Ordering/Billing timeline is subject to unanticipated network planning and design changes encountered in the network testing and implementation phases. If network design changes do occur, IT/Ordering/Billing work must stop until the revised network design is complete. (SBC has not yet been able to calculate estimated wholesale IT/Ordering/Billing costs but hopes to provide them in its reply comments).

These estimates are based on the very simplest network and IT/billing models possible. Namely, with regard to the network model, it is assumed that routing to alternative DA providers is accomplished using a local 7/10-digit number (depending on the local dialing plan) or CIC code. (Each of these assumptions has its own technical and policy concerns, as discussed more fully below). If routing directly to trunk groups is required, the estimates would be much higher. With regard to the IT/billing model, it is assumed that no recording is done in SBC switches for purposes of providing end-user billing information to alternative DA providers. Rather, it is assumed that each DA provider will do its own recording and submit bills to SBC using the existing billing and collections process. If end-user recording for alternative DA providers is required, the estimates would be much higher.

c. NATIONAL SMS; LEC SCP/STP Networks

If for some inexplicable reason a national SMS were mandated, and SBC continued to utilize its own SMS/SCP/STP network due to network security/technical infeasibility considerations, SBC estimates it would take between approximately 1 ½ to 2 ½ years, and approximately $40 million to $50 million (if tandem trunking is involved), for SBC alone to make the required network changes. This sum includes the estimated $21.5 million to deploy new SCPs and upgrade existing SCPs (and their supporting SMSs) and $15 million for labor to

develop service logics on two distinct platforms, translate switches, upgrade and program operations support systems to support service order provisioning, engineering the SCPs, and testing and validating the service logics that is included in the first proposal. It also includes an additional $4 million for changes to operations support systems to permit transmission of data to the national SMS for provisioning and repair purposes. In addition to these one-time costs, SBC estimates a recurring, yearly cost of approximately $200,000 that likely would be charged by the third-party national SMS provider for 4 dedicated connections to the national SMS (1 per each of SBC's 4 regions).

Furthermore, it will take the same 24 months and $4 million for required retail IT/Ordering/Billing changes. All of these costs and time periods are in addition to the costs and time periods discussed by Celentano for development of the national database.

Again, these estimates are based on the very simplest network and IT/Ordering/Billing models, as referenced above, and any change in these assumptions would cause the estimates to be much higher.

d. National SMS/SCP/STP Network (Celentano Proposal)

If for further inexplicable reasons a national SMS/SCP/STP network were mandated and SBC could not utilize its own SMS/SCP/STP network, then the costs associated with deploying new and upgrading existing SCPs would not be incurred. Nevertheless, SBC estimates it would take between 2 to 3 years, and an estimated $10 to $20 million (if tandem trunking is involved), to make the required network changes. This sum includes approximately $7 million for labor to assist with national development of the service logic requirements, verification of testing by the third party vendor, translating the switches with the 411 trigger, and upgrading operational support systems to support service order provisioning. It also includes the $4 million referred to

above for changes to operations support systems to transmit data to the national SMS database for provisioning and repair purposes.

In addition to these one-time costs, SBC estimates a yearly cost of approximately $22 million that likely would be charged by the national SMS/SCP/STP provider for querying the national SCPs. This estimate is based upon known and forecasted DA data and an analogous LIDB query charge of $.02 per query.

Furthermore, it will take the same 24 months and $4 million for required retail IT/Ordering/Billing changes. All of these costs are in addition to the $22.80 million estimated by Celentano for development of the national SMS/SCP/STP network.

e. Unresolved Technical and Policy Issues

In addition to grossly underestimating the time and costs required to implement an AIN-based 411 presubscription model, Celentano also fails to account for numerous unresolved technical and policy issues. These issues are summarized below.

i. Routing Issues

Celentano variously refers to routing to DA providers via local numbers, CIC codes, and/or trunk groups. If routing to a trunk group is to occur, this would significantly increase the complexity and size of the database(s). A routing table is maintained in each switch. The routing table assigns a specific index number to a specific trunk group operating out of the switch. Although the route indices for all switches follow the same numbering scheme, each switch will vary as to the index number next up for assignment to a new trunk group. Furthermore, index numbers are not always assigned in sequential order. Thus, there is no way for a single route index to be assigned to a particular DA provider for use in all switches. There must be a distinct route index assigned for every switch from which a particular DA provider is

to receive traffic. The capacity required to store and process this volume of information on a regional, much less a national, basis will be tremendous and costly.

If local numbers are used for routing, end-users who obtain those numbers could dial them directly and avoid billing for DA calls. Therefore, some mechanism may need to be developed to prevent direct dialing of these numbers. On the other hand, if direct dialing is not prevented, DA providers may require information to be passed to them which indicates whether they were reached by direct dialing or by 411. InterLATA carriers today receive such information for the purpose of determining what rates to apply—presubscribed versus casual dialing. This capability would require additional changes to interoffice or other signaling, the cost for which SBC has not yet determined.

Routing through local numbers may also necessitate network changes so that ANI information needed for billing can be passed to DA providers. Today, LEC networks may not always forward "charge party" information on local calls, since such calls usually are not passed off to other carriers who would need to bill the end user for their transport or services. If ANI is to be passed for local calls to specific numbers used for access to DA providers, changes to inter-office signaling would be required, which would necessitate development by switch vendors.

ii. LIDB

Illuminet proposes use of Line Information Databases (LIDBs) to facilitate 411 presubscription. The addition of fields in each of the billions of account records in this AIN database would be required to identify a subscribers' choice of DA provider (as LIDB today identifies a subscribers' local exchange, intraLATA and interLATA PIC). Illuminet ignores the process that would be required to use LIDB to implement 411 presubscription.

Specifically, the FCC, or its delegate, would be required to identify the organization responsible for defining and obtaining approval of the new DA provider identifier code. An industry forum must issue development parameters that would define the new field in the LIDB record where the DA provider identifier code would be populated. The development parameters (called generic requirements) are critical, since specific fields in each LIDB record provide specific information. For example, Calling Name queries request just Calling Name information for Caller ID service; calling card validation queries request just calling card validation; and operator platforms obtain local exchange carrier information to brand calls in the local carrier's name. Illuminet has oversimplified the effort required to utilize LIDB for 411 presubscription.

Illuminet also ignored the requirement to revise service order systems to provide the information used to populate LIDB records with the new DA provider information. Service order systems feed data to LIDB via its SMS. Changes to service order systems must be reflected in Local Service Requests (LSRs). Changes to LSR processes, which feed service orders, are negotiated in the industry's Open Billing Forum (OBF). Changes to service order and LSR processes also require changes to interfaces between CLECs' and ILECs' Operations Support Systems (OSSs) and are subject to requirements of the Change Management Processes.[69] In light of the 271 process, the Commission is well aware of the complexities and industry challenges involved in changing service order processes and related OSSs. Those challenges were ignored in Illuminet's proposal.

[69] Paragraphs 219-231 and Attachment JJ of The Affidavit of Beth Lawson for Arkansas, *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Arkansas and Missouri* (Aug. 2001).

iii. Billing

Telegate presumes that DA providers would have the option of using LECs to bill their customers. They do not and the Commission should not require LECs to bill on behalf of DA providers. Such action would contravene established Commission precedent that the market for billing services is competitive, rendering LEC billing services inessential. DA providers would have innumerable choices for billing services. LECs therefore must not be required to bill on their behalf.

In any event, SBC's existing network does not have the capability to bill for DA providers. Today, all recording for purposes of billing end-users for DA services is done in SBC's DA platform via operator switches. None of SBC's end office switches is equipped to record use of DA services for purposes of end-user billing. Thus, there would be a need for software development by switch vendors. Some switch vendors have indicated that they no longer will provide software updates for their switches. This would require replacement of those switches. Even where switch vendors are willing to provide software updates, the time required to get these changes into regularly scheduled releases would not be minimal. Further, there would be no method of billing for DA call completion or other enhanced services DA providers might want to provide. The FCC would have to resolve these billing complexities.

2. Switch-Based 411 Presubscription

The switch-based 411 presubscription proposal is even more cost prohibitive than the AIN-based proposal. Currently, end-office switches are not equipped for 411 presubscription. They do not have the capability to translate 411 into different routing instructions based upon end-users selection of a DA provider and the DA provider's required method of routing. To equip switches with this ability would require each switch vendor to develop new software. One

major vendor, Lucent, has indicated that it will not develop any new features for certain switch types. Some of these switch types are in SBC's largest cities.

If billing is required, these software updates also would have to include new functionalities to provide information for alternate DA providers to bill their customers for billing the alternative DA providers for network use. SBC's DA customers are billed from information gathered by SBC's operator switches. Since calls from users of alternate DA providers would never reach SBC's operator switch, end offices have to be the source of billing data for alternate DA providers. If billing record data is to be gathered in the end office switches, there is the potential for double billing SBC's own DA service end-users, since their billing records originate from information gathered from SBC's operator switches, not end office switches. Software development would be necessary for end offices to selectively gather billing information for alternate DA providers/users and not for users of SBC's DA services, so SBC's customers are not doubled billed by information from both end offices and the operator switches.

SBC estimates that it would take a minimum of 117 weeks and a potential maximum of 177 weeks to convert its end office switches at an estimated cost of $675 million to $685 million (if tandem trunking is involved). The bottom-line is switched-based 411 presubscription would be cost prohibitive for SBC and the industry as a whole. Adoption of this proposal would be bad public policy, as these tremendous costs necessarily would be borne by consumers to their detriment.

3. Miscellaneous Issues

Whether AIN-based or switched-based, 411 presubscription would have an adverse effect on public policy as discussed below.

a. Impact on Telecommunications carriers.

Wireless providers, incumbent LECs, CLECs, IXCs and equipment manufacturers all have experienced dramatic declines in market capitalization. All, in turn, sought to stem the negative financial tide by cutting thousands of jobs and drastically reducing capital investment. Particularly under these circumstances, the last thing the Commission ought to be doing is shifting revenues away from telecommunications service providers by parsing out DA services for presubscription among non-telecommunications services providers. Such a step would destabilize local exchange competitors by making it more difficult for them to obtain the revenues necessary to be successful in the local exchange market and to justify new investment. It thus would be anticompetitive in nature, and directly contrary to Congress' goal of promoting competition in the provision of telecommunications services. It would also be contrary to Congress' goal of promoting investment by all carriers in advanced capabilities.

b. Consumer Issues

If the Commission requires 411 presubscription, slamming for DA likely would emerge. This would require additional administrative oversight by the Commission and possibly additional policing activities by LECs.[70] Contrary to Telegate's assertions, there is no guarantee that a DA provider would identify itself at the beginning of a call, and it is questionable whether the Commission could require all DA providers to do so. Slamming for DA service is very foreseeable and ultimately would have to be addressed by the Commission.

Further 411 presubscription would trigger application of payphone service requirements. For example, how would 411 calls from payphones, hotels, hospitals and other call aggregators be handled? Would the Commission permit payphone site owners and hotel owners to select DA

[70] In the slamming context, LECs administer the majority of slamming complaints.

providers? If so, would they be required to post the identity of the DA provider picked for each line so that end users could dial around if they so desire?

Telegate assumes that if a national AIN-based 411 presubscription model is imposed, implementation will be straightforward and simple. Such an assumption is ill placed. As the Commission well knows, AIN was touted as a technology that could easily provide all functionalities required for LNP with little if any modification. However, even after national consensus was reached on the use of a national/regional SMS database and a uniform routing scheme, additional switch vendor development was required for unforeseen billing, interoffice signaling, and feature interaction complexities, as well as for changes to operations support systems (OSSs) and other infrastructure. And this was the case even with switches that already were AIN-equipped. Even today, unresolved technical issues remain in the LNP context. It is likely that AIN-based 411 presubscription would raise heretofore unanticipated issues likely to require heretofore undefinable and unquantifiable costs for vendor development of functions not presently supported by existing AIN capabilities. All of these issues would have to be addressed simultaneously with implementation of any 411 presubscription proposal.

c. Third party administrator

The Commission seeks comment on whether a third party administrator is necessary for 411 presubscription. Notwithstanding that 411 presubscription is unwarranted and bad public policy, if required, a third party administrator would be wholly unnecessary. ILECs' existing service order systems keep track of subscriber-specific information. Today, service orders are the source for information that populate all downstream systems for local exchange service, including 911, listing databases, billing, provisioning in end office switches, LIDB and interLATA and intraLATA carrier choices. Changes to a subscriber's DA service provider must

be reflected in a service order change originated by the subscriber through his or her local exchange carrier. A subscriber's DA provider choice must be available in pre-ordering information, which also is fed by service order processes. Such action would be consistent with the FCC's determination that OSSs are required for pre-ordering, ordering, provisioning, billing and repair/maintenance,[71] which necessarily would encompass DA service choices. Given the foregoing, a third-party administrator simply is unnecessary and unworkable.

d. Impact on CLECs

InfoNXX argues that only ILECs should be required to implement 411 presubscription. The Commission has no authority to limit 411 presubscription to ILECs given Congress' express directive that Section 251(b)(3) apply to all LECs. Where Congress intended to create obligations solely for ILECs it did so expressly in Section 251(c). Notwithstanding, ILECs do not have market power in the DA market. Combined, the major ILECs accounted for only about 52% of total wireline DA calling volumes for 2000,[72] which conclusively demonstrates that ILECs should not be treated differently for purposes of DA regulations. Further, InfoNXX cannot justify any asymmetry between CLECs and ILECs in the provision of DA. Both provide DA as part of the local service offering. The N11 triggers are office-based. Thus, all calls dialed by end-users of CLECs through resale or unbundling of ILEC services would be routed to the SCP for call processing. CLECs have the same access to and ability to provide DA as the ILECs, and use the 411 code in the same manner as the ILECs. Further, many CLECs use their own facilities and non-ILEC wholesale providers to provision DA. There is no reason to distinguish between CLECs and ILECs for purposes of 411 presubscription.

[71] 47 CFR §51.317(g), also Appendix C of FCC 99-238, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking in the Matter of Implementation of the Local Competition Provisions of Telecommunications Act of 1996*, (CC 96-98) released November 5, 1999.

If 411 presubscription is required, CLECs who purchase custom routing from ILECs could be adversely affected. The Commission requires that custom routing be available to CLECs who today want to route their local exchange subscribers to the CLECs' choice of DA provider. This is accomplished by routing all CLEC local exchange subscribers' calls to designated trunks groups connecting to the chosen DA provider. If these subscribers are also given the ability to presubscribe, there would be an incompatibility in requirements to provide custom routing to a CLEC's choice of DA providers and their local exchange subscribers' choices of DA providers.

A. 411XX Codes

Implementation of 411XX(X) dialing codes could be the most challenging and costly alternative proposed in this proceeding. Given the impacts of such a dialing scheme, the coordination among industry segments, and potentially the international agreements that might be needed, such a scheme would take years to implement. SBC did not develop specific cost impacts, given that its high-level assessment of this proposal indicated that 411XX would not be a feasible alternative.

The existing numbering plan and switches do not support a dialing string of 411 followed by a two or three digit suffix. If the switch were only modified to allow a customer to dial 411 followed by a two or three digit suffix, the switch would not immediately recognize the call as a complete dialing sequence. The switch, therefore, would wait between 16 seconds to 24 seconds for additional dialing digits, which would create customer confusion, frustration and ultimately service degradation. After waiting 16 seconds to 24 seconds the switch would then send the call

[72] *NERA* at 51.

to the routing tables, which have no definitions for routing 411 calls followed by a two or three digit suffix.

To implement this proposal, SBC and presumably all LECs would have to upgrade all of their switches to support 411XX(X) dialing and reduce the aforementioned wait time for routing of the call. These changes would not be easy. For example, if SBC reduced the wait time to receive additional digits to 4 seconds, and a customer paused longer than 2 seconds between dialing 411 and the additional two or three digits, the call would be routed to 411, instead of 411XX(X). Arguably 411 can be removed from the network with time and effort, but many customers are used to dialing 411 for directory assistance and would be inconvenienced if 411 is removed from network. Customers will find it harder to obtain directory assistance information, rather than easier, and many customers will complain to their local telephone companies and commissions.

Upgrading switches to reduce the wait time could also have the effect of reducing the amount of time allowed for customers to dial digits within a string of a 7 or 10 digit number, potentially increasing the frequency of dialing errors by customers. In addition, changing the dialing plan to allow further digits following 411 could impact 911 service. For example, making the switch wait up to 4 seconds following 911 dialing to determine if additional digits are forthcoming would delay processing of 911 calls. Given the critical nature of 911 calls, an additional 4 seconds in processing time would be wholly unacceptable from a public safety standpoint. Additional network changes would be required to differentiate 911 from other N11 dialing.

In addition, because the 411XX(X) proposal represents a change to the national dialing plan, it would affect all systems that perform/support dialing. PBXs, smart coin phones, and

intelligent CPE, which does not support 411XX(X) as a valid dialing sequence today, would have to be updated. Equipment that is not updated to support 411XX(X) would not allow customers access to directory assistance services. In addition, interexchange carriers would have to upgrade their interoffice signaling between themselves and the local exchange carrier, otherwise 411XX(X) calls would be treated as an error and not be processed for InterLATA calls.

Phasing in a conversion to 411XX(X) is not in the public interest. Switches probably cannot easily support both 411 and 411XX(X) dialing. Phasing in a mix of the 411 scheme in some switches and 411XX(X) in other switches in the same area would be confusing to customers. Until the conversion was complete in the area, customers would not know whether they should dial 411 or 411XX(X) for directory assistance. Implementing a flash cut (where a new capability is implemented at the same time the old method is disabled) would involve the entire industry, LECs, IXCs, equipment manufacturers, and the users of intelligent CPE. Errors from such a flash cut are likely to result.

Further, because 411 is part of the North America Numbering Plan, the other participants in the Plan including Canada and the Caribbean countries would have to opt in or out of whatever changes the U.S. makes to preserve dialing parity for DA services.

C. 555 Numbers

Despite the wide assignment of 555 numbers today, a 555-XXXX dialing pattern (or more correctly an NPA-555-XXXX dialing pattern) for 411 presubscription would prove costly and time-consuming to implement. First, more than seven thousand three hundred and fifty two

(7,352) 555-XXXX numbers have already been assigned as of March 12, 2002.[73] Second, using 555-XXXX, either as a switch-based routing or as an AIN platform using custom service logic, would take years to implement. As a switched based feature, [74] SBC estimates 555-XXXX could not be implemented until 2005 and 2006[75] and would cost $431 million to $447 million.[76] Using 555-XXXX with AIN, [77] SBC estimates it would take 30 to 36 months to develop, implement and test, and would cost $12 million to $31 million. Both of these cost and time estimates are based on SBC's best guess at this time without consulting with various vendors and various assumptions.[78]

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[73] 555 assignees have the option of deploying their service on a regional or national basis. Thus, a DA caller in Dallas may not be able to call the same 555 number if travelling in New York.

[74] If the 555 offering were implemented as a switch-based feature, modifications would be required to the entire network. All switches are currently configured to perform six digit translations (NPA-XXX) for the routing of inter-switch telephone calls. To facilitate routing of NPA-555-XXXX numbers, switches would have to perform 10 digit translations. Converting these existing switches to process 10 digit translations would require the replacement of the Lucent 1AESS switch, since the switch cannot be upgraded due to its discontinuance. For all other switching equipment, new software and hardware would need to be developed to support 10 digit translations.

[75] These timeframes are necessary for vendor software and hardware development, vendor testing, lab tests, field integration, methods and procedures to train people to program switch, and the actual programming of switches.

[76] For SBC, this estimate includes the cost (primarily labor, right to use fees, OSS upgrades, and capital expenditure) to replace the 1AESS switch and to upgrade other existing switches.

[77] As with the switch-based feature, any 555-XXXX using the AIN platform would require carriers to route calls based upon a 10 digit translation. Currently, 6 digit translation and routing are the foundation for all number assignment and routing within North America. 10 Digit translation impacts network design, existing network equipment and software, and planning.

Additionally, a 555-XXXX AIN alternative would impact ordering and billing systems that support access operations. Today, access ordering systems are designed to support ordering, billing, and provisioning based upon combinations of NPA-NXX. Both the industry standard ASR order format and the Access Operational Support Systems that process order would require change. The ASR order format is an industry standard derived through OBF. Changes to this industry standard format typically take 18 months. All carriers using the standard ASR order, like SBC, would have to either seek modifications to existing OSS from vendors or generate the changes internally.

[78] Such consultations or other assumptions may result in increased or decreased time and cost estimates.

Third, if 555 directory assistance "blocking" capability were required, additional technical issues would emerge. Some customers may want a capability to avoid additional charges that may be incurred by calls to alternate directory assistance providers. Local carriers cannot presently block calls to inter-LATA 555 numbers since they do not normally perform digit analysis beyond determining the NPA indicating an inter-LATA destination, and then handing the call to the PIC'd IXC. Further, because 555 numbers could be used for services other than directory assistance, 555 blocking would affect all local 555 numbers, even those used for purposes other than directory assistance. No switch would be able to support "partial" blocking of local 555 calls in any practical manner. Blocking inter-LATA 555 calling in local switches would require switch vendor software development. Older switches would not be able to support the additional line classes to support 555 blocking.

Fourth, routing 555-XXX calls to preselected directory assistance providers would conflict with custom routing already required to be provisioned by ILECs for the benefit of CLECs. A switch cannot perform multiple functions. It can either custom route 555 calls for a CLEC or it can route 555 calls to another directory assistance provider, but a switch cannot do both. So, if 555 numbers are to be used for alternate Directory Assistance providers, LECs could not continue to custom route directory assistance calls to CLECs or the DA providers CLECs choose to provide DA services to their local exchange subscribers.

Fifth, implementing 555-XXXX dialing as a switch-based feature would require LECs to build enormous routing tables. The maintenance of such large routing tables would be administratively challenging and the impact of such large tables on the operation of the switch is unknown.[79]

[79] Specifically, a switch-based solution would require significantly larger routing tables than used today. Today a switch has basically two different tables. One table defines external routing to numbers that are

In addition, 555-XXXX as a switch-based feature for directory assistance would require businesses that are using the 555 dialing code for other services, such as nationwide calling or toll free services, to redesign their services. For the foregoing reasons, designating 555-XXXX numbers for directory assistance is unwarranted.[80]

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not served by the switch. The second table defines internal routing for numbers that are served by the switch. The table for internal routing defines routing for the complete number (NPA-NXX-XXXX). The table for external routing normally defines routing only for the NPA or NPA-NXX (6 digit translation).

To provide individual routing to individual DA providers using 555 numbers, SBC would need to define routing for individual numbers in the external routing table. In other words, external routing tables would have to use 10 digits, instead of the 6 digits currently used. This would substantially increase the size of the external routing tables.

For example, a moderately sized switch in the Chicago area may serve roughly 40,000 lines using eight office codes (NXXs). The Chicago LATA has seven local area codes (NPAs). With about 800 assignable office codes per NPA, there is a need to support routing entries for up to 5600 (7 NPAs x 800 NXXs) local NPA-NXXs. There are about 300 NPAs assigned in the North American Numbering Plan. The switch routes only on an NPA basis for NPAs that are in distant LATAs. So to route to numbers not served by the switch, a total of about 5900 routing entries are needed (5600 for local NPA-NXX, 300 for interLATA NPA).

A 555 offering could require the switch in this example to support up to 70,000 more entries in the external routing table. Because of the way switches are currently designed, separate entries are needed for 555 numbers in each local area code. From the switch perspective, for example, 847-555-1234 would require its own entry, separate from an entry for 224-555-1234, even though both are within the same LATA (Chicago). Since there could be as many as 10,000 numbers within each 555 office code, a switch in a LATA like Chicago with 7 active NPAs (and therefore one 555 office code for each NPA) could need 70,000 routing entries in the external routing table. (Currently the NANPA shows nearly 8000 number assignments within the 555 codes.) The impacts on a switch of increasing the external routing tables by an order of magnitude are unknown. Older switches would be unable to support such large tables. For switches to support tables of such size, additional memory/storage would be needed. There would be impacts on internal table audit processes, as well as on other administrative activities that switches perform.

Such large external routing databases would have to be maintained. Administration of such large table would have impacts which cannot be estimated.

[80] About 900 companies have been assigned 555 dialing codes. Uses for these number assignments are diverse and employ many different billing scenarios, such as calling party pays, called party pays, and toll free service. Any 555 assignment for alternative directory services would need to be compatible with other 555 applications, or these applications would not work. Again, the switch cannot perform multiple functions and route 555 calls one way for one company and another way for another company. Companies that have built part or their whole business around 555 dialing would have to redesign their product so it was compatible with 555-XXXX as an alternative to 411 presubscription.

D. Carrier Access Codes

Assignment of Carrier Access Codes ("CAC") for DA would not be in the interest of consumers or DA providers. It would require all consumers to dial lengthy numbers to access DA, not an improvement in providing service. Further, numerous DA providers would be unable to avail themselves of these codes because they lack carrier identification codes ("CICs") which are necessary for CACs.

CACs are formed by combining the prefix "101" with a carrier's distinct four-digit CIC. CACs are used today by customers choosing to dial around their presubscribed IXC in order to reach different long distance and DA providers.[81] For example, consumers may reach MCI's DA services by dialing 10-10-9000. In this sequence, the CIC is "0900." The final "0" signifies that the customer is accessing MCI for operator services.

If CIC codes are used in the manner used today, i.e. same use of Feature Group D trunks, same access billing, and same tariff rates, there would be minimal impact on the ability of LEC networks to support the use of CAC codes for alternative DA providers. However, if CAC codes or any other alternative dialing scheme is mandated as the only dialing permitted for LEC DA service, thus necessitating the removal of 411 from LEC-end offices, significant additional costs would be incurred. SBC estimates that it would take approximately 3 months, after the alternative dialing scheme is put in place (but prior to it being implemented), to remove 411 from

[81] Any discussion of using CICs/CACs for DA services must bear in mind that key issues remain unresolved. In the *North American Numbering Plan Further Notice,* the FCC directed the North American Numbering Council (NANC) to present to the Commission the NANC's recommendations on the tentative conclusions and proposals in the Further Notice relative to the use and assignment of CICs. Administration of the North American Numbering Plan Carrier Identification Codes, *Further Notice of Proposed Rulemaking and Order*, FCC 97-364, CC Docket No. 92-237 (rel. Oct. 9, 1997). The NANC responded on February 5, 1998 and the industry still awaits a Commission decision.

all SBC end offices. Additionally, costs would be incurred for fielding customer calls and handling customer trouble reports brought about by customer confusion when 411 calls no longer can be connected to a DA operator. In addition, an as-yet unquantifiable cost and time delay would be involved in developing and installing vendor software changes needed to equip LEC operator platforms to handle the new dialing and routing scheme. There also would be costs associated with converting trunks connecting end offices to those platforms if existing operator trunks could not be used.

In addition, there are significant policy issues at stake that render use of CAC codes for alternative DA providers contrary to the public interest. In the NPRM, the Commission proposes reserving CIC codes 411X and X411 for DA providers. This would prove unworkable because only 20 such CIC codes would be available (where X is replaced by the digits 0-9 in each configuration). It is highly unlikely that 20 CIC codes would be sufficient to satisfy the demand. Two years ago, ALTS reported that at least 375 CLECs currently provide local exchange service.[82] Under this proposal, the majority of CLECs would not have access to a 411X or X411 code and this situation is exacerbated if 411 is eliminated.

The NPRM also asks whether 411 presubscription should be combined with this approach, and, further, how 411X and X411 codes could be assigned. 411 presubscription, if mandated, would obviate the need for any alternative code. But as previously demonstrated, the exorbitant costs of implementing 411 presubscription greatly outweigh any purported benefits, rendering 411 presubscription unworkable. As for assignment methods, the Commission should not mandate an alternative dialing proposal that clearly would deprive a significant number of

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[82] ALTS, "The State of Competition in the U.S. Local Telecommunications Marketplace," at 2 (Feb. 2000).

carriers from having access to the code. There simply are not enough 411x and X411 codes to assign to ILECs, CLECs, and IXCs, not to mention alternative DA providers.

E. 411 Elimination

If the Commission implements one or more of the proposed alternative dialing methods, the Commission should retain use of the 411 code. Consumers are accustomed to using the 411 code to access their local provider's DA and should continue to have this capability. Elimination of this code would create extensive customer confusion and frustration. SBC's experience with changes in area codes indicates that consumers have a difficult time adjusting to code changes. If 411 is eliminated, SBC expects to receive innumerable questions and complaints from consumers. Further, as the market currently demonstrates, alternative directory providers can provide their DA products without use of the 411 code. Service quality and features are key to the success of any directory or consumer product. Consequently, alternative DA providers using alternative dialing codes are fully capable of attracting consumers to their product and have done so successfully to date.

Notwithstanding, if 411 is eliminated, carriers would have to remove "411" from each switch. This would require carriers to identify each 411 dialing pattern in each switch and remove the routing capability. Also, the existing announcement for 411 would need to be identified and disabled in each switch. In addition, an unquantifiable cost and time delay would be involved in developing and installing vendor software changes needed to equip LEC TOPS platforms to handle the new dialing scheme.

V. GIVEN DIFFERING MARKET STRUCTURES AND CONDITIONS IN EUROPEAN TELECOMMUNICATIONS MARKETS, THE COMMISSION SHOULD NOT EMULATE OTHER COUNTRIES' DA POLICIES.

Telegate asserts that Germany, Ireland, Britain and Spain have successfully moved DA providers from the historical dialing code to alternative dialing codes and urges the Commission to consider their success in deciding how to promote competition in the DA market.[83] Given the marked differences in market structure, service quality, and competition between the American DA market and European DA markets, the Commission should not apply European DA policies to the DA market in the United States.

As a threshold matter, there are institutional and market structure differences between U.S. and European telecommunications markets. First, no European market has a long history of privately owned telecommunications firms; rather European carriers have been part of government entities well into the 1990s, and as a result many have operated inefficiently. (cite) Second, no European country has adopted the level of market opening initiatives adopted by the U.S. Third, no European country has the level of competition existing today in the U.S. DA market. All of these differences must be considered in determining whether European DA policies are appropriate for the U.S.

Interestingly, European countries that have opened their DA markets to competition have not adopted presubscription for DA. In fact, no country requires presubscription for DA.[84] Several countries have implemented alternative dialing codes, but given the foregoing significant market differences, such policies are not justified in the US. Take Germany for example. While Germany did transition to a "118XX" DA dialing format, the benefits from this change would

[83] *See e.g.*, Telegate exparte at 12, September 26, 2001

[84] *NERA* at 47.

not be realized in the US for the following reasons. First, Germany's main incumbent provider, Deutsche Telecom (DT), faced little local exchange competition at the time DA dialing code policy changes were being considered. This is in sharp contrast to what the U.S. local exchange marketplace faces today. Numerous CLECs compete with ILECs in the provision of local exchange service and CLECs, IXCs and wireless carriers compete extensively with ILECs in the provision of DA.[85]

Second, DT's DA service quality was among the worst within the European telecommunications industry. In some instances, 20% of DA calls were not even answered by DT operators.[86] In contrast, and as demonstrated previously, U.S. ILEC service quality for DA is high and monitored by most state regulatory agencies. Third, the regulatory environment for DA service differs significantly between the U.S. market and the Germany market prior to adoption of the DA policies.[87] These regulatory differences (e.g., service quality requirements, pricing and call allowances, among others) further illustrate the disparate starting points between the U.S. DA market and the Germany DA market. In any event, despite the introduction of alternative dialing codes in Germany, Germany DA call volumes declined in 2001, demonstrating that the availability of alternative dialing will not necessarily increase consumer demand for telephony DA.[88]

Further, the two-tiered U.S. regulatory structure means that alternative dialing methods would be more costly to implement than in Europe. Germany, the United Kingdom, Ireland and

[85] *NERA* at 62.

[86] *Id.*

[87] *NERA* at 63.

[88] *NERA* at 64.

Spain each have a single regulator that controls policies at both the national and local level. In the U.S., the FCC sets national policies and regulates interstate pricing while the states control local pricing and regulation. Presubscription, alternative dialing or 411 elimination, accordingly, would prove much more complicated in the U.S. because of the simultaneous federal and state regulatory adjustments that would have to be made to implement these proposals.[89]

In addition, Telegate urges the Commission to consider Oftel's plan for introduction of a new 118XY number range for DA and elimination of the 192 dialing code, Britain's version of 411. In Oftel's September 2001 statement regarding DA access codes, Oftel stated,

> Consumers in the UK currently have no real choice over who provides directory enquiry (DQ) service…. At present UK consumers are only able to access the DQ service provided by their network operator, generally by dialing 192. There are few value-added services, variable quality of service and, in practice, no real price competition."

Oftel's findings are irrelevant to this proceeding because many of the premises upon which Oftel relies do not apply in the U.S. First, U.S. consumers, in contrast to UK consumers, have a variety of directory choices and services available to them.[90] Second, there are significant market structure differences between the U.S. and UK markets. For example, British Telecom [BT] was never split like AT&T into local and long distance operations; thus BT's DA market share, estimated to be 85% in 2000,[91] far exceeds the major U.S. ILECs' market share of 52%.[92] U.S. ILEC DA market share demonstrates that US consumers have the opportunity to choose from multiple and viable DA competitors.[93] Third, Oftel's concerns regarding value

[89] *NERA* at 54, 55.

[90] *NERA*, at 56,58.

[91] *NERA* at 49.

[92] *NERA* at 50.

[93] *NERA*, at 57-58.

added services (e.g., call completion) and service quality do not apply to the U.S. DA marketplace. ILECs, unlike BT, must meet high service quality standards set by state regulatory agencies. Additionally, U.S. toll and wireless providers provide value-added DA services.[94] Lastly, and most importantly, Oftel's cost-benefit analysis does not remotely apply to the U.S. DA marketplace due to differences in network configurations, regulatory oversight, DA rates, and numbering policies.[95] Based on the foregoing, it is evident that the UK and U.S. are at distinct starting points for promoting competition in DA markets. Thus, the incremental benefits cited by the Oftel documents are likely to be minimal in the U.S.[96]

VI. CONCLUSION

For the foregoing reasons, SBC urges the Commission not to require 411 presubscription, assign alternative dialing methods, or eliminate 411. The market, coupled with existing Section 251(b)(3) regulations, has proven effective to ensure that consumers have ample telephony DA choices and alternative enhanced directory choices. No additional DA regulation is warranted.

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[94] *NERA* at 58.

[95] *NERA* at 61.

Respectfully Submitted,

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[96] Interestingly enough, Oftel's market research does not imply that US policies should be changed. In fact, Oftel suggests it may not be necessary to eliminate the use of the 411 code. NERA, Pages 59-61.